

MEDIA RELEASE

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Landlords must pay safety costs – not commercial tenants

The Victorian Small Business Commissioner, Geoff Browne, has welcomed today's clarification in an Advisory Opinion by VCAT on the ability of landlords to pass on the costs of essential safety measures and certain repair and maintenance obligations to commercial tenants.

The key elements of the VCAT Advisory Opinion are that

- A landlord must bear the cost of compliance with essential safety measure obligations, and cannot pass these costs on to the tenant;
- For some obligations, the landlord may agree with the tenant for the tenant to meet the requirements, but at the landlord's expense;
- More generally, the landlord cannot pass on to the tenant as outgoings the cost of complying with certain repair and maintenance obligations under the Retail Leases Act 2003.

"There has been significant legal debate for a number of years on whether a landlord could require a tenant to either fulfill or pay for a landlord's obligations relating to Essential Safety Measures," said Mr. Browne.

Essential Safety Measures (ESMs) are a broad range of obligations ranging from sprinkler and air conditioning systems to fire extinguishers, exit signs, and compliance reports.

The Victorian Small Business Commissioner used additional powers acquired last year, to seek the Advisory Opinion from VCAT as to whether the landlord can impose the cost of compliance on the tenant.

The Tribunal confirmed that "the referral is in the public interest given the frequency and significance of disputes under retail premises leases about ESMs and the need for clarification of the rights and obligations of landlords and tenants under these leases"

Both the Law Institute of Victoria and the Real Estate Institute of Victoria supported the Commissioner's application for the Advisory Opinion.

"Many of the 1000 retail lease disputes we receive each year relate to obligations of landlord and tenant in regard to repair and maintenance of leased premises, and a significant number of these involve complying with Essential Safety Measures," Mr Browne said.

"This VCAT Advisory Opinion will assist us to provide better information and guidance to commercial tenants and landlords, in Victoria, about repair and maintenance obligations, help prevent disputes and also assist in their resolution", he said.

The Advisory Opinion can be downloaded from www.vsbcbic.vic.gov.au. Media queries: Geoff Browne, Victorian Small Business Commissioner, 03 9651 9316.